

## Department of Energy

## 909.407-3

fact-finding conference shall be conducted in accordance with rules consistent with FAR 9.406-3(b) promulgated by the Energy Board of Contract Appeals. The Energy Board of Contract Appeals will notify the affected parties of the schedule for the hearing. The Energy Board of Contract Appeals shall deliver written findings of fact to the Debarring Official (together with a transcription of the proceeding, if made) within a certain time period after the hearing record closes, as specified in the Energy Board of Contract Appeals Rules. The findings shall resolve any disputes over material facts based upon a preponderance of the evidence, if the case involves a proposal to debar, or on adequate evidence, if the case involves a suspension. Since convictions or civil judgments generally establish the cause for debarment by a preponderance of the evidence, there usually is no genuine dispute over a material fact that would warrant a fact-finding conference for those proposed debarments based on convictions or civil judgments.

(d) *Debarring Official's decision.* (4) The Debarring Official's final decision shall be based on the administrative record. In those actions where additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared and included in the final decision. In those cases where the contractor has requested and received a fact-finding conference, the written findings of fact shall be those findings prepared by the Energy Board of Contract Appeals. Findings of fact shall be final and conclusive unless within 15 days of receipt of the findings, the Department or the respondent requests reconsideration, as provided in the Board's Rules, or unless set aside by a court of competent jurisdiction. The Energy Board of Contract Appeals shall be provided a copy of the Debarring Official's final decision.

### **909.406-6 Requests for reconsideration of debarment.**

(a) At any time during a period of debarment, a respondent may submit to the Debarring or Suspending Official a written request for reconsideration of the scope, duration, or effects of the suspension/debarment action because

of new information or changed circumstances, as discussed at FAR 9.406-4(c).

(b) In reviewing a request for reconsideration, the Debarring or Suspending Official may, in his or her discretion, utilize any of the procedures (meeting and fact-finding) set forth in 48 CFR (DEAR) 909.406-3 and 909.407-3. The Debarring or Suspending Official's final disposition of the reconsideration request shall be in writing and shall set forth the reasons why the request has been granted or denied. A notice transmitting a copy of the disposition of the request for reconsideration shall be sent to the respondent and, if a fact-finding conference under 48 CFR (DEAR) 909.406-3(b)(4) is pending (as in the case of a request for reconsideration of a suspension, where the proposed debarment is the subject of a fact-finding conference), a copy of the disposition shall be transmitted to the Energy Board of Contract Appeals.

### **909.407-2 Causes for suspension. (DOE coverage—paragraph (d))**

(d) The Suspending Official may suspend an organization or individual:

(1) Indicted for or suspected, upon adequate evidence, of the causes described in 48 CFR (DEAR) 909.406-2(c)(1).

(2) On the basis of the causes set forth in 48 CFR (DEAR) 909.406-2(d)(2).

(3) On the basis that an organization or individual is an affiliate of a suspended or debarred contractor.

### **909.407-3 Procedures. (DOE coverage—paragraphs (b) and (e))**

(b) Decisionmaking process.

(1) In actions based on an indictment, the Suspending Official shall make a decision based upon the administrative record, which shall include submissions made by the contractor in accordance with 48 CFR (DEAR) 909.406-3(b)(1) and 909.406-3(b)(3).

(2) For actions not based on an indictment, the procedures in 48 CFR (DEAR) 909.406-3(b)(2) and FAR 9.407-3(b)(2) apply.

(3) Coordination with Department of Justice. Whenever a meeting or fact-finding conference is requested, the

Suspending Official's legal representative shall obtain the advice of appropriate Department of Justice officials concerning the impact disclosure of evidence at the meeting or fact-finding conference could have on any pending civil or criminal investigation or legal proceeding. If such Department of Justice official requests in writing that evidence needed to establish the existence of a cause for suspension not be disclosed to the respondent, the Suspending Official shall:

(i) Decline to rely on such evidence and withdraw (without prejudice) the suspension or proposed debarment until such time as disclosure of the evidence is authorized; or

(ii) Deny the request for a meeting or fact-finding and base the suspension decision solely upon the information in the administrative record, including any submission made by the respondent.

(e) Notice of suspending official's decision. In actions in which additional proceedings have been held, following such proceedings, the Suspending Official shall notify respondent, as applicable, in accordance with paragraphs (e)(1) or (e)(2) of this section.

(1) Upon deciding to sustain a suspension, the Suspending Official shall promptly send each affected respondent a notice containing the following information:

(i) A reference to the notice of suspension, the meeting and the fact-finding conference;

(ii) The Suspending Official's findings of fact and conclusions of law;

(iii) The reasons for sustaining a suspension;

(iv) A reference to the Suspending Official's waiver authority under 48 CFR (DEAR) 909.405;

(v) A statement that the suspension is effective throughout the Executive Branch as provided in FAR 9.407-1(d);

(vi) Modifications, if any, of the initial terms of the suspension;

(vii) A statement that a copy of the suspension notice was sent to GSA and that the respondent's name and address will be added to the GSA List; and

(viii) If less than an entire organization is suspended, specification of the organizational element(s) or indi-

vidual(s) included within the scope of the suspension.

(2) If the Suspending Official decides to terminate a suspension, the Suspending Official shall promptly send, by certified mail, return receipt requested, each affected respondent a copy of the final decision required under this section.

[61 FR 39857, July 31, 1996; 61 FR 41684, Aug. 9, 1996]

### Subpart 909.5—Organizational and Consultant Conflicts of Interest

SOURCE: 62 FR 40751, July 30, 1997, unless otherwise noted.

#### 909.503 Waiver.

Heads of Contracting Activities are delegated the authorities in 48 CFR (FAR) 9.503 regarding the waiver of OCI requirements.

#### 909.504 Contracting Officer's Responsibility. (DOE coverage-paragraphs (d) and (e)).

(d) The contracting officer shall evaluate the statement by the apparent successful offeror or, where individual contracts are negotiated with all firms in the competitive range, all such firms for interests relating to a potential organizational conflict of interest in the performance of the proposed contract. Using that information and any other credible information, the contracting officer shall make written determination of whether those interests create an actual or significant potential organizational conflict of interest and identify any actions that may be taken to avoid, neutralize, or mitigate such conflict. In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated. Before determining to withhold award based on organizational conflict